

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**ATAIN SPECIALTY INSURANCE  
COMPANY,**

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**Case No: 1:42-cv-23311**

***Movant,***

**VERSUS**

**PAY MY CLAIM LLC,**

***Respondent***

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**MOTION TO COMPEL NON-PARTY PAY MY CLAIM LLC’S  
COMPLIANCE OR HOLD PARTY IN CONTEMPT AND BRIEF IN SUPPORT**

Defendant, Atain Specialty Insurance Company (“Atain”), moves pursuant to Rule 45 of the Federal Rules of Civil Procedure for an order compelling Pay My Claim LLC (“Pay My Claim”) to comply with its subpoena for the production of documents and/or to show cause why it should not be held in contempt for failing to comply with the subpoena to produce certain documents in its possession, which are not otherwise publicly available, and which are relevant to the claims and defenses raised by the parties in *Historic St. Peter African Methodist Episcopal Church, Incorporated d/b/a St. Peter A.M.E. Church v. Atain Specialty Insurance Company*, No. 2:23-cv-3927 (E.D. La.) (“the Atain litigation”).

Atain has also filed today with this Court a motion to transfer this matter under Federal Rule of Civil Procedure 45(f) to the U.S. District Court for the Eastern District of Louisiana, which presides over the Atain litigation. Due to the complex issues relating to both this motion and Atain’s motion to transfer to the Eastern District of Louisiana, Atain believes a hearing could assist in addressing any questions or concerns that the Court may have.

## **BACKGROUND**

### **The Subpoena**

Atain has reason to believe that Pay My Claim has documents that bear on (1) the payments and funding of the Hurricane Ida repairs in the underlying Atain litigation and (2) integral knowledge of the claim including but not limited to the repairs, contractors involved and timeframe of repairs.

On July 16, 2024, Atain sent a subpoena to Pay My Claim LLC, through its registered agent, Jesse Schwartz at 6330 Manor Lane Suite 200A, Miami, Florida 33143 (the “Subpoena”). This subpoena required the production of documents and attached a list of documents to produce, titled “Exhibit A.” Ex. A, App. at 1-5. Service of the subpoena was executed on July 24, 2024 through an employee of Pay My Claim’s registered agent. Ex. B, App. at 1-2. The subpoena sought 8 categories of documents relevant to the Atain litigation, including:

1. A true and correct copy of any and all bank statements, deposit slips, cancelled checks, invoices, receipts, log books, registers, draw requests, diaries and/or credit card statements that evidence payment to Structure Ace, LLC and/or Historic St. Peter African Methodist Episcopal Church for repair costs, materials cost, and/or equipment costs provided or to be provided at 1201 Cadiz Street, New Orleans, LA 70115.
2. A true and correct copy of the entire written and/or electronic file in the possession, control and/or accessibility of Pay My Claim, LLC, its employees, agents and/or representatives relating to interactions with Structure Ace, LLC aka Structure Ace, including contracts, draw schedules and/or evidence of financial transactions.
3. A true and correct copy of the entire written and/or electronic file in the possession, control and/or accessibility of Pay My Claim, LLC, its employees, agents and/or representatives relating to the property located at 1201 Cadiz Street, New Orleans, LA 70115.
4. A true and correct copy of any and all electronically generated data, including but limited to all mails, facsimiles, hand written notes and/or written documents in the possession, control and/or accessibility of Pay My Claim, LLC, its employees, agents, and/or representative relating in any way to work performed and/or contemplated for the benefit of Historic St. Peter African Methodist Episcopal Church for the property located at 1201 Cadiz Street, New Orleans, LA 70115.

5. True and correct copies of any and all electronic data and/or written documents in the possession, control and/or accessibility of Pay My Claim, LLC, its employees, agents and/or representatives including but not limited to any correspondence, memoranda, inter-office communications, facsimile communications and/or electronic mail, text messages and/or instant messages which in any way relate to any work performed, and/or contemplated and/or estimated concerning the property of Historic St. Peter African Methodist Episcopal Church located at 1201 Cadiz Street, New Orleans, LA 70115.
6. True and correct copies of any and all electronic data and/or written documents in the possession, control and/or accessibility of Pay My Claim, LLC, its employees, agents and/or representatives relating to any proposals, estimates and/or bids for any work performed and/or contemplated and/or estimated at the property of Historic St. Peter African Methodist Episcopal Church located at 1201 Cadiz Street, New Orleans, LA 70115.
7. True and correct copies of any and all electronic data and/or written documents in the possession, control and/or accessibility of Pay My Claim, LLC, its employees, agents and/or representatives regarding any materials, equipment and/or labor purchased and/or paid to Structure Ace, LLC, its employees, agents and/or their representatives regarding work performed and/or contemplated and/or estimated at the property of Historic St. Peter African Methodist Episcopal Church located at 1201 Cadiz Street, New Orleans, LA 70115.
8. True and correct copies of any and all documents and/or financial statements concerning the work Structure Ace, LLC was to perform relating to the property of Historic St. Peter African Methodist Episcopal Church located at 120 Cadiz Street, New Orleans, LA 70115.

The deadline for producing the documents was by or on August 17, 2024 at 10:00 a.m. Since the passing of the deadline, no counsel or representative of Pay My Claim has contacted or even attempted to contact Atain.

### **ARGUMENT**

Rule 45 requires a party served with a subpoena to file any objections to the subpoena in writing within the time specified for compliance. Fed. R. Civ. P. 45(d)(2)(B). Defendant has received no objections from or on behalf of Pay My Claim LLC as of the date of this motion to the subpoena delivered to Pay My Claim LLC requesting compliance by August 17, 2024.

Further, Fed R. Civ. P. 45(g) provides the remedy for the failure of a non-party to respond to a subpoena without a reasonable excuse. This subrule provides that the issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it. In addition, both Fed R. Civ. P. 34(c) and Fed R. Civ. P. 45 provides that a nonparty may be compelled to produced documents and tangible things or to permit an inspection.

“[I]t is no longer open to debate that the discovery rules should be given a broad, liberal interpretation.” *Edgar v. Finley*, 312 F.2d 533, 535 (8<sup>th</sup> Cir. 1963) (citing *Hickman v. Taylor*, 329 U.S. 495 (1947)); *see also Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978) (explaining that relevancy under Rule 26 “has been construed broadly to encompass any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case”). Here, the information Atain requests is directly relevant to its defense of the underlying Hurricane Ida suit filed by St. Peter A.M.E. Church.

With respect to any burden imposed on Pay My Claim by the subpoena, Atain has narrowed its request to a limited category of documents that it believes can be identified and produced without imposing undue burden on Pay My Claim – the documents containing information relating to one property in particular, St. Peter A.M.E. Church located at 1201 Cadiz Street, New Orleans, LA 70115.

Lastly, Atain has complied with Fed R. Civ. P. 45(a)(1)(A)’s requirements of a subpoena. In complying with Rule 45(a)(1)(A)(i), the subpoena stated the court of issuance as the Eastern District of Louisiana. As for Rule 45(a)(1)(A)(ii), the subpoena stated both the title of the action and its civil-action number as *Historic St. Peter African Methodist Episcopal Church, Incorporated d/b/a St. Peter A.M.E. Church v. Atain Specialty Insurance Company*, No. 2:23-cv-

3927. The subpoena also properly commanded what was required of Pay My Claim under Rule 45(a)(1)(A)(iii) – that of document production and finally also contained the text of both Rule 45(d) and (e) to comply with Rule 45(a)(1)(A)(iv). Therefore Atain’s subpoena was proper as both to substance and form.

### **CONCLUSION**

**THEREFORE**, for all the above-stated reasons, Atain Specialty Insurance Company respectfully requests that this Court (1) order Pay My Claim LLC to either comply with the subpoena for the production of documents dated July 16, 2024 by a date certain and/or to appear before the Court at a date and time to be set by the Court to show cause why they should not be held in contempt for failing to comply with Defendant’s subpoena and (2) award Defendant costs and attorney fees incurred in seeking enforcement of the subject subpoena and/or order sanctions against Pay My Claim LLC for failing to comply with the subpoena pursuant to Fed. R. Civ. P. 34(c) and Fed. R. Civ. P. 45(g).

Respectfully submitted:

**GALLOWAY, JOHNSON, TOMPKINS,  
BURR & SMITH, PLC**

/s/ Jake M. Sonenblum

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***Counsel for Defendant, Atain Specialty Insurance  
Company***

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished to the following, via electronic mail and the ECF Portal, this **August 29, 2024**.

*/s/ Jake M. Sonenblum*

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EDWARD N. KRAKAUER  
JAKE M. SONENBLUM